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SUBJECT: SPECIAL 301 REVIEW FOR THE BAHAMAS

REF: STATE 159

¶1. Summary: The Bahamas was removed from the Special 301 Watchlist in 2007, but concerns remain among premium television entertainment channels regarding The Bahamas use of compulsory licensing to broadcast certain channels. This has been a longstanding issue between the Television Association of Programmers Latin America (TAPLAT) and Cable Bahamas. Post recently met with both sides and has agreed to co-host with The Bahamas a roundtable discussion with stakeholders. Other IP concerns in The Bahamas are minimal, with small scale vendors selling pirated DVD's, CD's and handbags at the local straw market or in shopping centers. The Bahamas is our closest ally in the Caribbean region and they work as partners with the U.S. on a daily basis on matters ranging from migrant and narcotics interdiction to health issues in an effort to keep our borders safe. While the Cable Bahamas issue remains unresolved, post does not believe it merits inclusion on the Special 301 Watchlist. Post will pursue the television channel issue with the GCOB and believes a resolution can be reached. End Summary.

TRIPS Implementation and FTA Implementation

¶2. Amendments made in 2004 to the Copyright Act and Regulations, which would narrow the scope of compulsory licensing to include only "communication and reception over the air and not encrypted" have not yet been implemented. Cable Bahamas has entered into contracts with U.S. program distributors to legitimize much of its programming and continued good faith efforts in 2008 to obtain licenses for the remaining programs. However, Cable Bahamas continues to intercept encrypted programming for other premium channels and rebroadcasts it to local subscribers. Cable Bahamas claims that its actions with respect to the remaining U.S. premium channels are justified because those channels are unable to provide a level of service comparable to that provided in the United States (specifically availability of English channels and currency of programs). Cable Bahamas maintains that if compulsory licensing is immediately discontinued the majority of subscribers will switch to illegally registered satellite feeds from Florida, resulting in an even greater lack of compensation to U.S. copyright holders.

¶3. TAPLAT has not agreed to enter into licensing contracts with Cable Bahamas because they do not want to set a precedent for the region. TAPLAT has made good faith efforts to address the concerns presented by Cable Bahamas, including having over 90% of their programming available in English and current broadcasting of the majority of programs. TAPLAT maintains that the real issue is pricing, as the fees that Cable Bahamas has held in escrow for them are likely insufficient.

¶4. Post continues to have meetings on all sides to address this issue. The next step is a roundtable meeting with all sides, under the auspices of the GCOB. The GCOB would like to see this long standing issue resolved and is confident a resolution can be reached.

¶5. The Bahamas has no new legislation related to geographical indications, integrated circuits, plant variety protection or TRIPS based IP.

DATA PROTECTION

¶16. There is insufficient test data submitted by pharmaceutical and agricultural chemical companies in The Bahamas to make protection of test data an issue.

ENFORCEMENT

¶17. The Bahamas has made efforts to improve the protection of intellectual property during the last two years. In 2007 an IP Enforcement Unit was created within the Criminal Investigative Division of the Royal Bahamas Police Force (RBPF). In 2008 Bahamian law enforcement officials attended a week-long workshop hosted by the Department of Justice that resulted in the creation of a customized protocol designed for combating IP crime in The Bahamas. While progress has been made on the policing side, more work remains to be done in the judicial arena in prosecuting cases. IP crime cases are processed slowly in the judicial system - a warehouse raid that resulted in the confiscation of 14,000 counterfeit items will go back to court on April 15, 2009. In recognition of the need to improve the judicial process the GCOB sent several prosecutors to USPTO GIPA training in 2008.

¶18. Bahamian law states that those that hold the rank of police investigator or higher may seize counterfeit goods, however custom officers do not have that same privilege. At the port of entry customs officers do not have a process by which they are able to evaluate whether incoming goods are counterfeit, do not have the legal authority to launch an investigation without a complainant and do not have a legal mechanism by which to bar the goods entry into The Bahamas. Customs officers report that oftentimes illegal goods are knowingly permitted into the country after taxing them as they would for legal goods. Prime Minister Ingraham's administration recently carried out an overhaul of senior customs officials, highlighting the need to "modernize" management in order to improve performance.

NOTORIOUS MARKETS

¶19. The Bahamas does not have any large marketplaces to rival the centers found in places like China and Russia. Pirated goods are available for sale at the local straw market, by street vendors, and in some shopping centers in New Providence.

INTERNET PIRACY

¶10. Internet piracy is not a major concern in The Bahamas and there are no websites promoting illegal downloads of movies or music operated out of The Bahamas. The IP Enforcement Unit within the RBPF monitors IP crime online and the GCOB discourages internet users from downloading movies and music illegally.

PRODUCTION, IMPORT AND EXPORT OF COUNTERFEIT GOODS

¶11. The availability of counterfeit handbags makes it clear that counterfeit goods are being imported into The Bahamas. There is no evidence that they are being re-exported or that they are manufactured locally. Street vendors and small shops pirate digital media for local sale using personal computers.

OPTICAL MEDIA PIRACY

¶12. No CD's, VCD's, or DVD's are legally mass-produced in The Bahamas. However, pirated CD's, VCD's, and DVD's are produced and sold on a small-scale basis. Several stores sell pirated media, and certain vendors of pirated media marketing their wares from roadside stands (although this is becoming less common). Few complaints have been lodged about this practice over the years and U.S. companies have stated in the past that the market is too small to warrant devoting legal resources to filing a complaint and appearing multiple times to press the complaint to conclusion. Police inspectors have stepped up investigations of stores selling pirated goods and are legally able to seize pirated media without a complainant so long as there is reasonable cause. The police

conducted raids on street vendors and in warehouses in the past two years. A major warehouse raid in 2007 resulted in the confiscation of 14,000 counterfeit items and is currently pending review in the court system.

USE/PROCUREMENT OF GOVERNMENT SOFTWARE

¶13. The Data Process Unit (DPU) of the Ministry of Finance purchases all government software. The unit complies with international standards of copyright protection. Each agency must request software from the DPU, which then purchases, installs, upgrades and troubleshoots, as required. All software used by the GCOB is licensed according to industry and international standards.

TREATIES

¶14. The GCOB is not a member of WTO, but reviews WTO requirements and continues to consider amendments that will bring The Bahamas into compliance with WTO requirements, including WCT and WPPT.

COMMENT

¶15. The commercial dispute between Cable Bahamas and TAPLAT has been remained at an impasse for many years. The GCOB is well aware of the issue and wants both sides to reach a resolution. Aside from the television programming dispute, pirated and counterfeit goods continue to be a small-scale problem in The Bahamas. The RBPF continues to strengthen general IP enforcement mechanisms and takes advantage of training opportunities when possible. In light of the progress made in combating IP crime in other areas and given the especially close cooperation the U.S. has with The Bahamas on issues ranging from interdiction to migration to health issues, post does not recommend The Bahamas be included on the Special 301 Watchlist. Pos will continue to pursue this issue with the GCOB nd push for a resolution.

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